

Alliance for Local Sustainable Agriculture - ALSA

PO Box 1316 • Pt. Reyes Station, CA 94956 • 415-663-8618 • alsamarin.org

02/21/08

North Central Coast Stakeholder Group
Marine Life Protection Act Initiative
Sheraton Hotel
1010 Northgate Blvd.
San Rafael, CA

Re: Marine Life Protection Act Initiative

Dear Stakeholders,

The MLPA process is being used to remove shellfish aquaculture from Drakes Estero. This is an abuse of the process.

Individuals on both the north central stakeholder group and the science advisory team include the superintendent and staff from the Point Reyes National Seashore. These individuals are the very same people that are under federal investigation for alleged scientific misconduct *specifically* regarding Drakes Estero. They have been accused of falsification, fabrication and selective omission as part of their scientific misconduct. (See Attachment) The Department of the Interior Inspector General is investigating the alleged misconduct of these individuals. The National Academy of Sciences – the National Research Council, as instructed by Senator Feinstein, has been retained to review the scientific report, *Drakes Estero, A Sheltered Wilderness Estuary*, generated by, and under the direct supervision of these NPS employees who have inserted themselves into the MLPA process. The Drakes Estero report published by these MLPA participants is also the subject of a Data Quality Act complaint. This formal complaint was filed by a number of agricultural and environmental groups. This complaint alleges that a number of NPS's own laws and policies regarding integrity of science were not followed, and perhaps intentionally ignored. The director of the National Park Service agreed that the questionable scientific document not be republished and that it be removed from the Point Reyes National Seashore website.

ALSA Board:

Lynnette Kahn, Marshall - President
Donna Yamagata, Inverness - Secretary
Michael Greenberg, Inverness - Treasurer

Jeffrey Creque, Ph.D., Petaluma
Webster Otis, Stinson Beach
Peggy Rathmann, Nicasio

Jo Ann Stewart, Olema
Elizabeth Ü, Bolinas
John Wick, Nicasio

There is no doubt that these individuals have tried to create the illusion of harm by the oyster farm in Drakes Estero, and they have been caught. They have been very public about their goal of making Drakes Estero, which is completely surrounded by commercial livestock agriculture, "wilderness". The NPS MLPA individuals will claim that a "solicitor's opinion" forces them to convert Drakes Estero to wilderness in 2012. We have found nothing that would prohibit the NPS from issuing a permit to extend the current and historic use of shellfish cultivation in Drakes Estero beyond 2012. They appear to be using the MLPA process to further their agenda to remove the shellfish farm from Drakes Estero. Some of the same misuse of science is now appearing in the MLPA process.

These MLPA individuals have already influenced other groups and agencies with this same discredited science. These include the California Coastal Commission, the California Department of Fish and Game, the National Parks Conservation Association and the Environmental Action Committee of West Marin. Even after the NPS retracted its claims of environmental harm caused by the oyster farm in Drakes Estero and after their scientific claims have been discredited, a select few at the EAC, without polling their membership, continue to support those very same misrepresentations of science. The Executive Director acts as if he is speaking for a large portion of the environmental community of West Marin. He is not. He is also on the North Central Coast MLPA Stakeholders Group.

We cannot allow the MLPA process to be used to force shellfish aquaculture out of Drakes Estero. The purpose of the MLPA is good, and we support it. The purpose is to protect marine life. The purpose does not include furthering a wilderness agenda at Point Reyes.

We are not scientists, yet even we can find significant problems with the "science" put forth in this process. The "scholarly science", "peer reviewed science" and "best available science" language used in the MLPA planning documents invokes an expectation of a high level of professionalism. One obvious example of improper science is that the "science" includes a quote from John Dixon, a California Coastal Commission biologist. The quote was taken from a memo written about a one-day boat trip into Drakes Estero. The MLPA SAT suggests that this was a peer reviewed, vetted scientific paper. It was not. Further, this document was also misquoted, which completely changed the meaning of the section in Dixon's memo. Another obvious example is how the SAT is not using "best available

science”: There has been a significant amount of research performed in Drakes Estero. This NPS funded research has concluded that the oyster farm operations do not have a significant effect on eelgrass, sediments or fish populations. Why has this been selectively omitted? There is a huge body of science that has clearly demonstrated that cultured shellfish provide ecological services that actually add to the health of an estuarine ecosystem. Why is this missing from the MLPA science process? This obvious omission is unscholarly and unacceptable.

Eelgrass in Drakes Estero has more than doubled in the past 15 years, now representing more than 7% of the entire state’s eelgrass beds. Marine mammals are thriving in Drakes Estero. Drakes Estero is nationally recognized for its sea bird and shore bird abundance and diversity. By any standard, this is a healthy, thriving marine ecosystem. This is all true with a shellfish farm that has been producing food for over 80 years. The oyster farm enhances, rather than threatens, the natural systems of Drakes Estero.

The MLPA stakeholders need to recognize the significant environmental damage that would certainly result from removing shellfish aquaculture from Drakes Estero. On less than 10% of the waterbottoms of Drakes Estero, using no feeds, no fertilizers, no chemicals, the oyster farm has annually produced nearly 800,000 pounds of shellfish meats. These 400 tons of affordable seafood, sustainably raised with a net positive effect¹ to the environment where they grow, are all marketed in the San Francisco Bay Area. If the MLPA process forces the closure of this historic coastal-dependent use, only *more* pressure will be put on our declining wild fish stocks. Additionally, a huge increase in greenhouse gas production will result from a MLPA decision to remove shellfish farming in Drakes Estero. The SF Bay area contributes largely to the 8 billion dollar US seafood trade deficit. Without this significant local seafood production, 400 tons of seafood produced somewhere else in the world will have to be flown in to replace this appropriate local food source.

The MLPA stakeholders need to recognize that a decision eliminating this farm in Drakes Estero would also have a serious negative effect on our local food system, our culture, our health, our jobs, our housing and our local economy. Marin’s agricultural landscape is 99% grass-based; we have plenty of milk and beef. Shellfish offers the protein diversity needed for a

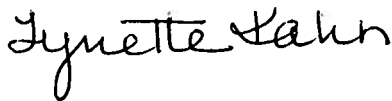
¹ See World Wildlife Fund aquaculture dialogue

healthy, local food system. The oyster farm provides housing to many of its 30 employees and their families. The economic loss resulting from a MLPA decision to eliminate the oyster farm would effect more than our local economy and schools. A larger part of the SF Bay Area's restaurants, markets and seafood distribution systems that also depend on this safe, affordable, reliable local product would also be impacted.

The CDFG, the CF&G Commission and the state MLPA groups should actively use their authority to protect regionally, culturally and environmentally appropriate coastal-dependent uses. The MLPA process cannot be allowed to create a law or policy which would make it impossible for the National Park Service to issue a permit to continue this valuable agricultural use, as they continue to do so for all of the livestock agriculture surrounding Drakes Estero. Drakes Estero is centered within operating dairy and beef ranches, and it is the best example of a working landscape within the Point Reyes National Seashore.

Protected areas are important to the survival of our marine ecosystems and biodiversity. Drakes Estero is one of those places. Drakes Estero is protected by the California Dept. of Fish and Game, the California Coastal Commission, and the National Park Service. The MLPA level of protection chosen for Drakes Estero and for Tomales Bay must be at a level in which the current shellfish aquaculture use can continue into perpetuity. Our community and our environment depend on it.

Sincerely,

A handwritten signature in cursive script that reads "Lynette Kahn".

Lynette Kahn
President

A local assault on reason: seeking the truth about Drake's Estero

GUEST COLUMN
BY BILL WIGERT, COREY
GOODMAN & MARK DOWIE

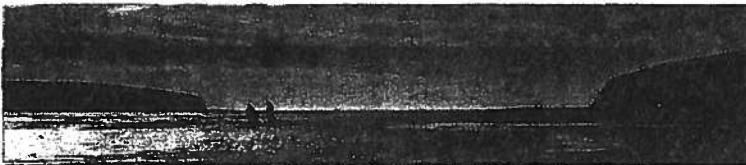
This column is written by a lawyer, a scientist and a journalist, all three concerned about the way the principles of their professions have been exploited and abused in the ongoing controversy surrounding oyster farming in Drakes Estero. From our perspective very few people on either side of this contentious issue appear to have read and considered the relevant law or the relevant science. As a consequence both science and the law are being inadvertently distorted, and indirectly so is the media. Here are several of many examples we have found, beginning with the law.

The lease by Drake's Bay Oyster Co. with the federal government is set to expire in 2012. The Point Reyes National Seashore (PRNS) and various environmental groups have incorrectly stated that when this event occurs, Drakes Estero will become wilderness under the 1976 Point Reyes Wilderness Act (the "1976 Act"), re-named the Phillip Burton Wilderness in 1985. This is not the case. Only one thing is necessary for the oyster farm to continue beyond 2012 -- the Secretary of the Interior needs to extend the present lease. There are no legal barriers to prevent the Secretary from exercising this power. The West Marin chapter of the Sierra Club, in the May-June 2006 *Sierra Club Yodeler* magazine, wrote: "The 1976 wilderness bill for Point Reyes states clearly that the 2000-acre Estero will become part of the Phillip Burton Wilderness Area when the oyster-growing lease expires in 2012." This statement is false. Let's look at what the Act really says: "... the following lands are hereby designated as wilderness: Point Reyes National Seashore, California, wilderness comprising twenty-five thousand three hundred and seventy acres, and potential wilderness additions comprising eight thousand and three acres." There is nothing in the Act about oyster farming. There is nothing in the Act about a 40 year lease.

The legislative history helps us to understand the intent of Congress in passing this legislation. Assistant Secretary of the Interior John Kyl recommended that certain areas of Point Reyes be designated as "potential" wilderness. Mr. Kyl sets forth the reasons why 8,003 acres of the park did not qualify as wilderness. Two of them were: "(1) Tidelands extending ¼ mile offshore. The State of California retains mineral and fishing rights over submerged lands. The reservation of such rights is inconsistent with wilderness. (2) Drakes Estero. Commercial oyster farming operations take place in this estuary and the reserved rights by the State on tidelands in this area make

this acreage inconsistent with wilderness." The legislative history shows that Congress acted on Mr. Kyl's letter and designated 8,003 acres as potential wilderness, not actual wilderness. Under the 1976 Act, the Secretary of the Interior has the right to change the status of Drakes Estero from potential wilderness to actual wilderness but only when "...all uses thereon prohibited by the Wilderness Act have ceased." The Secretary cannot designate Drakes Estero as wilderness until the oyster farm ceases and the State of California relinquishes its fishing and mineral rights to the Estero.

Environmental groups and PRNS officials often make the claim that for oyster farming to continue in Drakes Estero past 2012 would require congressional legislation amending the 1976 Point Reyes Wilderness Act. This is not the case. Drakes Estero could remain potential wilderness forever. Oyster farming



is not inconsistent with potential wilderness, as is the case now.

The fishing and mineral rights reserved to the State of California were a condition of the 1965 Act of the State of California conveying land to help form the Point Reyes National Seashore. These rights cannot be given away by any state agency, such as the Department of Fish & Game. Rather, it would take legislation by the State of California, signed by the governor, to give away these rights.

In summary, we can find no legal reason why the oyster farm should be eliminated from Drake's Estero in 2012. The Wilderness Act does not have to be amended for the oyster farm to remain. On the other hand, to change the Estero to wilderness status would require legislation by the State of California signed by the governor.

But is there a scientific reason to remove the oyster farm from Drake's Estero? The answer here too appears to be no. The PRNS has written that: "Specifically in Drakes Estero, ecological function has been degraded and altered over the past several decades due to activities associated with oyster farming and ranching." However, the scientific data do not support that claim, but rather show that the Estero is ecologically healthy.

The PRNS makes the claim, which many others have since repeated, that the oyster farm has directly impaired the eelgrass and eelgrass ecosystem in Drake's Estero. But the data do not support this claim. The California Department of Fish and Game in collaboration

with PRNS use aerial photographs to compare the extent of eelgrass coverage in the Estero, and have shown that eelgrass coverage has doubled from 368 acres in 1991 to 736 acres in 2007 (out of the Estero's total of 2200 acres), with eelgrass now growing closer to and in higher density surrounding the oyster racks. Most dramatic is the change in Schooner Bay which contains the highest density of oyster racks. In 1991, the aerial photos showed little eelgrass in Schooner Bay, whereas in 2007, this arm of the Estero is almost entirely covered by eelgrass. The report on the PRNS web site claims that the presence of the oyster racks "... amounted to at least 1.5 acres of lost eelgrass cover" while failing to mention that the eelgrass has doubled and expanded by 368 acres in harmony with the oyster farm. Jesse Wechsler, in his 2004 masters thesis, conducted at U.C. Davis under the guidance of Professor Debo-

up, the number of harbor seals has gone down. But analysis of published data reveals no statistically significant relationship between the number of oysters and the number of harbor seals over the past decade. The PRNS report lists the sources of disturbances to the seals and pups in 2006 as coming from non-motorboats -- kayaks, canoes, predators (bobcats and coyotes), turkey vultures, and hikers and clam diggers. Oyster workers are never mentioned at all. It appears as if tourists getting too close to the seal pups by land or by sea were the major source of disturbances in 2006. Most recently, the PRNS has made some extreme claims about the impact of oyster workers or seal pups during the ongoing 2007 season. This claim is difficult to confirm or refute because, thus far, the PRNS has been unwilling to share their data with us, even though we have asked for it via a Freedom of Information request.

In summary, our analysis reveals that there is no compelling scientific reason to remove the oyster farm from Drake's Estero. Nor is there a compelling legal reason. By accepting for publication without thorough fact checking, serious violations of sound science and law unbalanced and downright incorrect reporting has found its way into media and either confused or misinformed the public. This is not the way to address serious decisions or to make public policy.

Please understand that we have no predetermined conceptions or positions on this issue, nor are we taking sides. Although much of what we have found so far seems to support the legal and scientific claims put forward by Drakes Bay Oyster Company, each of us has informed the Lunny family that if we discover something scientifically or legally accurate that counters their claims, we will say so publicly, and if we find enough law and science to oppose an extension of their lease beyond 2012, we will do so.

In the meantime whatever position we hold will be guided by a careful reading of relevant legislation and peer-reviewed scientific research. And while we await an overdue Freedom of Information Act request for more raw data from the National Park Service, we welcome well-researched legal or scientific input from anyone on either side of this controversy. But please, spare us the unsubstantiated claims and careless rhetoric that have floated around this issue over the past few months.

Bill Wigert has been a member of the Sierra Club, for whom he has done pro bono legal work, since 1970. Corey Goodman is a member of the National Academy of Sciences. Mark Dowie teaches science and environmental reporting at the University of California Graduate School of Journalism.

rah Elliott-Fisk, funded by and in collaboration with the PRNS, compared the fish in Estero de Limantour (which lacks oyster racks) to Schooner Bay (which has the highest density of oyster racks). Wechsler found similar numbers of eelgrass-dependent fish in Schooner Bay compared to Limantour. He concluded that the fish of Drake's Estero, including eelgrass-dependent fish, had not been adversely impacted by the oyster farm. Elliott-Fisk, in collaboration with PRNS scientists, concluded in her 2005 report to the PRNS that: "We found the oyster racks to have no pronounced impacts on the eelgrass beds, which existed both under and away from the racks as an incredibly rich habitat type."

Another oft-repeated claim originating in PRNS literature is that the oyster harvesters and their boats are disturbing the harbor seals and seal pups in Drake's Estero. The data for the last decade (including 2006) are published in the PRNS Harbor Seal Monitoring reports, and they do not support this claim. Whereas seals declined along the northern California coast from 2005 to 2006 due (they suggest) to a reduced upwelling leading to reduced krill in the ocean, the number of pups increased in Drake's Estero from 2005 to 2006. Of the 8 major pupping sites, in 2006, Drake's Estero had the highest maximum count of seal pups. During the same period from 2005 to 2006, the number of oysters grown and harvested in Drake's Estero doubled. The PRNS has said, and others have repeated the claim, that as the number of oysters has gone